

GOOD LAW, P.C.

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

In re:)
) Case No.: 4:12-bk-08122-EWH
NIMBUS BREWING COMPANY, LLC,)
)
Debtor.) **LOGIN, INC.'S MOTION TO DISMISS OR**
) **CONVERT PURSUANT TO 11 U.S.C. 1112(b)**
)
) (Chapter 11)

Creditor, Login, Inc. ("Login"), hereby moves to dismiss this proceeding or convert it to a Chapter 7 proceeding in light of the Debtor's material breach of its obligations to make payments to Login under the Plan.

BACKGROUND

Nimbus Brewing Company, LLC filed its Chapter 11 proceeding on April 17, 2012, and after amended disclosures, a Plan of Reorganization was approved by the Court on January 24, 2014. In the Plan Login is a Class 12 Creditor. Login's payments under the Plan were required to be made commencing May 24, 2014. Nimbus has failed to make the required payment. Login's counsel contacted Nimbus' counsel on June 5, 2014 seeking payment. Nimbus did not make the payment. Nimbus has provided no reasonable justification for the omitted payment. Nimbus has failed in the past to make timely payments to the U.S. Trustee under the Plan (causing the U.S. Trustee's office to file its Notice of Non-Compliance on May 1, 2014). Apparently, Nimbus does not consider timely compliance with its obligations under the Plan to

1 be a priority. Login, however, has seen its Claim substantially reduced and extended under the
2 Plan, and should not be forced to endure commercial uncertainty and gamesmanship in receipt of
3 its Plan payments.

4 **POINTS AND AUTHORITIES**

5
6 11 U.S.C. § 1112(b)(1) provides that the Court “shall” dismiss or convert for cause upon
7 occurrence one of the events in 11 U.S.C § 1112(b)(4). 11 U.S.C. § 1112(b)(4)(N) articulates
8 one of the events to be a material default by the Debtor with respect to a confirmed Plan.¹
9 Failure to make payments under a confirmed Plan is an example of a material default. *See In re*
10 *AMC Mortg. Co.*, 213 F.3d 917, 920 (6th Cir. 2000) (“A failure to make a payment required
11 under the plan is a material default and is cause for dismissal”). Such is the case here.

12 **CONCLUSION**

13
14 The Court should dismiss or convert this Chapter 11 due to Nimbus Brewing Company,
15 LLC’s material default in failing to make its May 24, 2014 payment to Login, Inc.

16
17 DATED this 13th day of June, 2014.

18 **GOOD LAW, P.C.**

19
20 /s/ Gregory E. Good

21 Gregory E. Good
22 Attorney for Creditor Login, Inc.

23 Original of the foregoing filed electronically
24 this 13th day of June, 2014 with:

25 United States Bankruptcy Court
26 Tucson Division
27 38 South Scott Avenue
28 Tucson, AZ 85701

¹ The “material default” provision, 11 U.S.C. § 1112(b)(4)(N), was numbered 11 U.S.C. § 1112(b)(8) prior to amendment.

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1 Copy of the foregoing mailed
2 this 13th day of June, 2014 to:

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